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June 11, 1998

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JUN 11 1998

Magalie Roman Salas
Secretary
Federal Communications Commission
1919 M Street, N. W.
Washington, DC 20554

Re: CC Docket No. 97-211
Applications, as Amended, For Transfer
of Control of MCI Communications Corp.

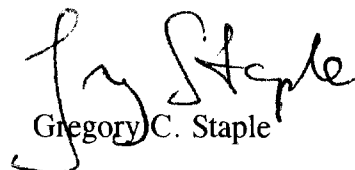
Dear Ms. Salas:

Transmitted herewith, on behalf of Telstra Corporation Limited ACN 051 775 556 (Telstra) are an original and four copies of "Comments of Telstra Regarding MCI's Proposed Divestiture of Internet Assets To Cable & Wireless (C&W)".

A copy of Telstra's "Comments" on a 3.5" computer diskette in an IBM-compatible format using WordPerfect 5.1 for Windows is also being transmitted herewith.

Any correspondence regarding this filing should be directed to the undersigned.

Very truly yours,


Gregory C. Staple

Before the
FEDERAL COMMUNICATIONS COMMISSION
 Washington, D.C. 20554

95-000000
 JUN 11 1998
 W/12 11:00 AM

In the Matter of)
)
 Application of WorldCom, Inc. and) CC Docket No. 97-211
 MCI Communications Corporation for)
 Transfer of Control of MCI Communications)
 Corporation to WorldCom, Inc.)

To: The Commission

**COMMENTS OF TELSTRA REGARDING MCI'S PROPOSED
 DIVESTITURE OF INTERNET ASSETS TO CABLE & WIRELESS (C&W)**

These comments are filed by Telstra Corporation Limited ACN 051 775 556 (Telstra), by its attorneys, in response to the Commission's June 4, 1998 Public Notice, DA 98-1059, "Commission Seeks Comment On MCI Ex Parte Describing Internet Aspects Of Proposed WorldCom And MCI Merger," released June 4, 1998.

A. Introduction and Summary

In its ex parte communication,¹ MCI describes the proposed divestiture of its so-called "Internet backbone business" to Cable & Wireless plc. ("C&W") and claims that the divestiture would not require FCC approval.² MCI also states that the divestiture "resolves the specific issues that regulators and commenters ... have raised about the effect on Internet competition

¹ See Letter from Mary C. Brown, Senior Policy Counsel Federal Law and Public Policy, MCI Telecommunications Corporation to Magalie Roman Salas, Secretary, FCC, dated June 3, 1998. That letter appends a 14 page document titled "Divestiture of MCI Internet Backbone Business," collectively "MCI Ex Parte."

² Id. at p. 9 "FCC approval is not required for this divestiture ..."

of the merger of WorldCom and MCI.”³ Based on the limited information provided in the MCI Ex Parte, Telstra disagrees with both of MCI’s assertions.

The divestiture apparently would involve the provision to C&W of a substantial number of common carrier services — i.e., MCI private line capacity, including international private line (IPL) capacity to various foreign points — used for MCI’s Internet backbone services. For example, MCI states that “[f]or international ISP customers, C&W will acquire not only the domestic portion of the backbone service but also (pursuant to a favorable two-year lease from MCI) the international circuits and domestic backhaul facilities used to connect foreign ISPs to nodes on the U.S. backbone.”⁴ Consummation of the proposed divestiture thus apparently would require MCI and/or C&W to file new or amended tariffs and/or carrier contracts with the FCC regarding the common carrier private line services to be offered to C&W and the post merger interconnection arrangements between MCI WorldCom and C&W. Prior Commission approval of these filings would be required under Title II of the Communications Act.

Further, because MCI acknowledges that it proposes to offer IPL capacity to C&W “pursuant to a favorable two-year lease,” close scrutiny of any such tariffs (or carrier contracts) plainly would be required to ensure that the common carrier backbone facilities at issue will not be made available to C&W (or by C&W to third parties) on terms and conditions which are discriminatory vis-a-vis other customers of the post-merger company which also are

³ Id. at p. 1.

⁴ Id. at p. 7.

Internet Service Providers (ISPs) and likewise require IPLs to provide global access to the Internet.

Indeed, it appears that the preferential Internet access arrangement which MCI would now have the FCC approve solely for the benefit of C&W vindicates the concerns which Telstra has expressed in this docket since January: The terms and conditions upon which MCI and other U.S. international carriers currently furnish IPLs to off-shore ISPs for Internet access are not cost-based and are unduly discriminatory. That appears to be why C&W is unwilling to acquire MCI's Internet backbone business as is, and has asked MCI to modify its generally applicable lease terms for Internet IPLs and backhaul circuits.

In view of the foregoing, Telstra submits that the public interest plainly requires the advance disclosure by MCI and C&W of the contract and/or tariff terms which would govern the lease of Internet backbone facilities to C&W as well as the terms on which C&W generally would interconnect its common carrier facilities with MCI WorldCom, post-merger. A careful FCC review of these terms is also essential. At a minimum, the FCC should not approve the proposed merger between WorldCom Inc. (WorldCom) and MCI unless common carrier Internet backbone facilities, including IPLs, are made available to C&W and all similarly situated parties, such as Telstra, on unbundled cost-based terms. Otherwise MCI's proposed divestiture of the "Internet backbone business" is only likely to exacerbate the proposed merger's anti-competitive impact on the global Internet.

B. Discussion

The proposed merger of MCI and WorldCom would combine two of the three largest U.S. IPL carriers and two of the largest Internet backbone networks. Telstra currently relies upon IPLs furnished by MCI, among others, to provide access to the global Internet, and such IPLs also enable U.S. Internet customers to access Internet sites in Australia and other foreign points. The terms and conditions on which Telstra obtains IPLs for Internet access, however, currently are not cost-based and are discriminatory, in part because they do not reflect the benefits which U.S. carriers receive from using these IPLs to deliver U.S. outbound Internet traffic to Australia. Telstra consequently has advised the FCC that the WorldCom-MCI merger would be likely to exacerbate the anti-competitive terms on which U.S. carriers provide global Internet access unless the agency requires the post-merger company to offer IPLs for Internet access on unbundled, cost-based terms which are no less favorable than those available to ISPs affiliated with MCI WorldCom.⁵

MCI now contends that the public interest concerns of Telstra (and other parties) will be mooted by the divestiture of MCI's "Internet backbone business" to C&W prior to (or

⁵ See "Comments of Telstra Corporation Limited," filed January 5, 1998 at pp. 1-2, 12-13. Specifically, Telstra has urged the FCC to require unbundled, cost-based access to three U.S. common carrier inputs required for global Internet access: (1) international private line (IPLs); (2) the U.S. domestic private line or "backhaul" circuits between major MCI WorldCom international gateways and major MCI WorldCom domestic Network Access Points (NAPs); and (3) NAP port services for the high bandwidth transmission speeds required by competing ISPs. Telstra also requested the adoption of appropriate record keeping and reporting requirements for monitoring these competitive safeguards.

simultaneously with) MCI's merger with WorldCom.⁶ "After the divestiture," MCI states, "MCI-WorldCom will have only those [Internet] backbone assets that WorldCom currently owns. The merger will not produce any increase in WorldCom backbone service or backbone capacity."⁷ Thus, contends MCI, "it is clear that this complete divestiture of MCI's backbone business resolves any substantive issue relating to the effect of the merger on the Internet."⁸ And, says MCI, "FCC approval is not required for this divestiture because the services provided over MCI's Internet backbone are unregulated and no transfer of any FCC license is involved...."⁹

Though divestiture of MCI "Internet backbone business" could, in principle, reduce the anti-competitive impact of the WorldCom-MCI merger, the divestiture terms made public thus far only underscore the concerns raised by Telstra regarding the combined companies' potential to discriminate against unaffiliated ISPs in providing backbone common carrier facilities for Internet access.

First, MCI is not proposing to divest any of the underlying international or domestic transmission facilities used for its current Internet backbone. Rather, MCI has proposed to lease such facilities to C&W and, for international facilities, to provide preferential terms —

⁶ Notably, in proposing the divestiture, WorldCom and MCI continue to "strongly dispute both the premise that a separate market for Internet backbone services exists and the conclusion that their merger will give them market power in this market." MCI Ex Parte at p. 3.

⁷ Id. at p. 9.

⁸ Id. at p. 11.

⁹ Id. at p. 9.

i.e., a "favorable two-year lease from MCI."¹⁰ MCI also proposes to transfer to C&W its existing contracts with ISPs so that "C&W will replace MCI as the provider of backbone service to more than 1,300 domestic and international ISP customers that now obtain access from MCI."¹¹ As a result, under the proposed divestiture, off-shore ISPs like Telstra which are now IPL customers of MCI and which now face discriminatory access terms, apparently would become customers of C&W under the same discriminatory terms.

In contrast, C&W -- presumably as a result of its underlying asset purchase contract with MCI -- would obtain "favorable" (i.e., preferential) access to the WorldCom MCI Internet backbone for its own ISP business. And C&W apparently would have no obligation to pass through these benefits to the ISP customers it is assigned by MCI or otherwise. It is fanciful to suggest that this type of "sweetheart" deal for common carrier backbone facilities is not only exempt from Commission review but also in the public interest.

C&W competes directly with Telstra and other global telecommunication service providers for both common carrier and Internet services.¹² And, as MCI and WorldCom well know,¹³ the private line facilities which they currently lease to other parties, including

¹⁰ Id. at p. 7.

¹¹ Ibid.

¹² The U.K. company, C&W, is the parent of Cable & Wireless, Inc. (CWI), a U.S. international carrier, and the controlling stockholder in Australia's second largest international carrier, Optus Communications Pty Ltd. C&W also has major carrier interests in over 25 other countries including the U.K., Japan and Hong Kong. See e.g., CWI's September 18, 1997 Foreign Affiliation Notice, FCC File No. FN 97-015.

¹³ For example, in the FCC's universal service docket, CC Docket No. 96-45, WorldCom previously admitted that the private line capacity furnished by WorldCom Technologies Inc. to UUNet, WorldCom's ISP business, is a basic telecommunications service

apparently C&W, for Internet backbone facilities are classified as basic common carrier facilities and are furnished pursuant to Title II of the Communications Act. The Commission itself has also made the status of Internet backbone facilities clear in its recent report to Congress on the universal service funding issues raised by the Internet. "The provision of leased lines to Internet service providers ... constitutes provision of interstate telecommunications"¹⁴ — that is a basic common carrier service. It is also uncontested that the international private lines offered by U.S. carriers for Internet and other services currently are subject to Section 214 of the Communications Act as well as the tariff requirements of Sections 201 and 203.¹⁵

Accordingly, any proposal to provide one special MCI (or WorldCom) customer -- namely C&W -- with "favorable" lease terms and to assign that party hundreds of Title II service arrangements (private line leases) is plainly subject to the Commission's jurisdiction and, at a minimum, would require MCI and likely C&W as well, to amend their existing private line tariffs before offering the basic backbone services contemplated under the

which is subject to universal service fees. See WorldCom Inc. "Comments" at 8., n. 15 [add date].

¹⁴ Report to Congress, CC Docket No. 96-45, FCC 98-67, released April 10, 1998, at ¶ 67. As such, carriers offering private lines to ISPs must include the revenues derived therefrom in their universal service contribution base. Ibid. Consistent with this Report, independent grounds for FCC review of the proposed Internet backbone divestiture exist to determine the impact which the merger and divestiture would have upon the contributions of MCI, WorldCom and C&W to universal service. The MCI Ex Parte assertion that none of the backbone leases to be transferred to C&W are regulated assets is particularly troubling.

¹⁵ See e.g., 47 C.F.R. Section 63.01 et seq.; Notice of Proposed Rulemaking, CC Docket No. 96-61, 11 FCC Rcd 7141, 7160 (1996) (deferring detariffing of all international telecommunication services to a later proceeding).

divestiture. Further, given MCI WorldCom's stated intent of favoring C&W's ISP business vis-a-vis other ISP businesses, the public interest would be disserved without (a) prior disclosure of all relevant tariff or contract terms (including the terms on which C&W will interconnect its common carrier facilities with the post-merger company);¹⁶ and (b) a finding by the FCC that the IPL and other common carrier facilities which C&W will obtain from MCI for Internet services will be furnished on unbundled, cost-based terms to similarly situated parties such as Telstra and other off-shore ISPs.

Second, the discriminatory nature of the common carrier offerings which MCI proposes to make in connection with its backbone divestiture is evidenced by the related concessions C&W appears to have obtained regarding peering and traffic routing. MCI states, for instance, that MCI will become "a wholesale customer of C&W's backbone services" and "C&W will enjoy substantial traffic and revenue guarantees from MCI that a competitive market does not provide ..."¹⁷ As well, MCI states "MCI will transfer to C&W all of the more than 40 peering arrangements to which MCI is a party and ... MCI has agreed to extend its current peering agreement with C&W on a long-term basis."¹⁸

As with the "favorable" IPL lease proposed by MCI, the foregoing traffic and peering terms highlight Telstra's prior concerns. Although Telstra must compete with MCI,

¹⁶ Section 211 of the Communications Act, 47 U.S.C. § 211, grants the FCC the power to review interconnection contracts between carriers. Section 43.51(a) of the Rules also require international carriers to file their contracts with other carriers for the provision of common carrier services.

¹⁷ MCI Ex Parte at pp. 8 and 10.

¹⁸ Id. at pp. 6-7.

WorldCom and C&W for both Internet and carrier services, neither the original merger proposal, nor the current merger plus MCI backbone divestiture, commit the post-merger company to offer non-affiliated ISPs (other than C&W, possibly) non-discriminatory Internet access. Moreover, the C&W divestiture proposal directly contradicts MCI WorldCom's January 1998 statements to the FCC regarding backbone access and peering. There the parties stated that foreign ISPs, such as Telstra, are offered "interconnection with their networks at the same price, and on the same terms and conditions that they offer access to domestic ISPs."¹⁹

The fact is, apart from the current ex parte representations regarding C&W, MCI and WorldCom have yet to disclose fully their current or post-merger terms for connecting with U.S. or off-shore ISPs — terms which are integral to assessing whether Internet backbone facilities will actually be made available on non-discriminatory terms. Moreover, to the extent such terms have been disclosed, they plainly do discriminate against non-U.S. ISPs such as Telstra.²⁰

¹⁹ "Joint Reply", dated January 26, 1997, at p. 90.

²⁰ For example, the criteria which WorldCom's UUNet subsidy announced in mid-1997 for peering disqualify Telstra and many other foreign ISPs because they lack U.S. backbone networks of adequate size and diversity (i.e., a U.S. network with DS-3 (45 Mbps) links to at least four city Network Access Points (NAPs). see "UUNet Details Peering Strategy" <www.usa.uu.net/press/peering.html> ISPs which lack direct peering agreements face unequal access to the U.S. Internet as UUNet has acknowledged. See Telstra's initial "Comments" at p. 6, n. 16.


Conclusion

For all of the above reasons, MCI's request to expedite approval of the WorldCom-MCI merger, conditioned on the divestiture of the MCI "Internet backbone business," should be denied absent: (a) full disclosure of the underlying terms on which any common carrier facilities and services for Internet access will be provided to C&W, and the terms on which C&W will interconnect its common carrier facilities with the like facilities of the post-merger company; and (b) an affirmative FCC finding that the common carrier facilities and services provided by the post-merger company to C&W for Internet access are cost-based and will be offered on unbundled, non-discriminatory terms to Telstra and other similarly situated parties.

Respectfully submitted,

TELSTRA CORPORATION LIMITED

By:


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June 11, 1998

CERTIFICATE OF SERVICE

I, Barbara Frank, a legal secretary in the firm of Koteen & Naftalin, L.L.P., hereby certify that on the 11th day of June 1998, copies of the foregoing "Comments Of Telstra Regarding MCI's Proposed Divestiture Of Internet Assets To Cable & Wireless (C&W)", were deposited in the U.S. mail, postage prepaid, or hand delivered*, addressed to:

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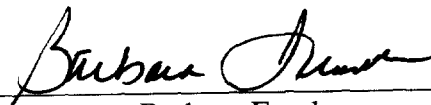
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Barbara Frank